MULTIMEDIA UNIVERSITY

STUDENT ID NO

MULTIMEDIA UNIVERSITY
FINAL EXAMINATION

TRIMESTER 3, 2021/2022

ULB2612 – LABOUR LAW

(All Sections / Groups)

8 AUGUST 2022
Reading Time : 9.00 a.m. – 9.15 a.m.
(15 Minutes)
Answering Time: 9.15 a.m. – 12.15 p.m.
(3 Hours)

INSTRUCTIONS TO STUDENT

1. Students will have **fifteen minutes** during which they may read the paper and make rough notes ONLY in their question paper. Students then have the remaining **THREE HOURS** in which to answer the questions.

2. This Question paper consists of 4 pages with 4 Questions only.

3. This Question paper consists of 2 sections. Attempt **ALL** questions in Section A and answer only **ONE** question in **Section B**. All questions carry equal marks and the distribution of the marks for each question is given.

4. Students are only allowed to bring in CLEAN AND ORIGINAL COPY of the following statutes into the exam venue :
   i. Employment Act 1955 (Act 265)
   ii. Industrial Relations Act 1967
   iii. Trade Union Act 1959
   iv. Employees Provident Fund Act 1991
   vi. Employees Social Security Act 1969

   "Clean" is defined to include no tagging, no annotation either by the publisher or anyone else, and no erased marking. Highlighting and underlining are also prohibited.

5. Please write all your answers in the Answer Booklet provided.

SECTION A: Answer ALL Questions

QUESTION 1

Mr Andrew contacted Matthew and informed Matthew that he will like to engage him to upkeep his homestay in Bukit Katil. Matthew was allowed to stay in one of the rooms in the homestay. In the process of up keeping the homestay, Mathew was allowed to cater food and drinks to people who visited the bungalow and to keep 10% of the amounts he charged to them for such service as his profit.

All equipment and supplies to enable Matthew to both maintain the homestay in good condition and to carry out his catering service was supplied by Mr Andrew who also paid him a monthly allowance. His allowances were progressively increased over the years and he also received bonuses and ex gratia payments. This state of affairs continued for about 15 years after which Mr Andrew closed the homestay and, as a result, Matthew's engagement as 'caretaker' as well. One year thereafter, Matthew lodged a complaint with EPF that Mr Andrew had not made Employee Provident Fund (EPF) contributions on his behalf. Matthew wants to take action against Mr Andrew. Advise Mathew

(Total: 25 Marks)

QUESTION 2

Ms Rose commenced employment with Bulan Matahari Sdn Bhd ("the Company') on 8 January 2018 in the Executive Documentation Department. She was confirmed in her employment 6 months thereafter. Ms Rose has a good record and performance and received the Best Worker Award in the year 2020.

In January 2021, Ms Rose had taken leave for 7 days without informing the company. This is because she was admitted to the hospital after being involved in an accident in Johor. Then she returned to the office and explained her absence for 7 days and provided the necessary documents to the Assistant Manager, Mr Osman.

One of the job scopes for Ms Rose is to handle matters relating to documentation of tender for the Company. In early February 2021, Mr Osman accused Ms Rose of modifying the documents for a tender applied by Suria Sdn Bhd and soliciting monies from Suria Sdn Bhd. Ms Rose denied the allegations.

Ms Rose was given a show cause letter dated 1 March 2021. No particulars such as the date, time and location of the incident as well as the identity of the worker of the Company were disclosed in the said show cause letter. Ms Rose provided her explanation to the show cause letter vide her letter dated 2nd March 2021, wherein she had raised the issue pertaining to the undisclosed identity of the worker from Suria Sdn Bhd.

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The Company proceeded to issue to the Claimant a Notice of Domestic Inquiry vide letter dated 7 March 2021 wherein 3 charges were laid down against Ms Rose.

> **"FIRST CHARGE:**
>
> That you as an Executive Documentation of the Company had sometime in February 2021 solicited money from Suria Sdn Bhd and threatened to re-tender the work package if your demand was not met. You have therefore breached the Company's Code of Conduct on 'Breach of Trust and Confidence' and 'Abuse of Power/Misuse of Position' (page 5 and 6 of the Code of Conduct for employees of the Company).
>
> **SECOND CHARGE:**
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> That you as an Executive (Documentation) of the Company had given a handwritten note of a telephone no. 0179988766 for communication purposes whereby on February 2021 the contractor received a WhatsApp message from the said telephone number giving details of a CIMB account no. 10504200443516 belonging to one Ms Rose and 18 February 2021, Suria Sdn Bhd the deposited a sum of RM3,000 to the bank account. You have therefore breached the Company's Code of Conduct for employees of the Company)
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> **THIRD CHARGE:**
>
> That you as an Executive (Documentation) of the Company had failed to come to work from 10 January to 16 January 2021 and failed to provide a complete documentation.

Ms Rose attended the domestic inquiry on 9 March 2021 despite the Notice of Domestic Inquiry dated 7 March 2021 is given to her only on 8 March 2021. Ms Rose merely had one day to prepare for the domestic inquiry. During the domestic inquiry, one of the panels of the domestic inquiry is Mr Osman who alleged that Ms Rose has committed a wrong against the company. In addition, the identity of the worker of Suria Sdn Bhd was not disclosed to Ms Rose neither was the worker of Suria Sdn Bhd called to testify at the said domestic inquiry.

Ms Rose was then terminated from her services by the Company vide a letter dated 15 March 2021. Advise Ms Rose whether any action can be taken against the Company under the Malaysian Labour law.

(Total: 25 marks)

Continued..

QUESTION 3

Electric Success Sdn Bhd ("the Company") and Union for Electronic Workers ("the Union") were at all material times bound by a collective agreement that was registered in the Industrial Court pursuant to the provisions of section 16 of the Industrial Relations Act 1967 ('the Act') and given cognizance No 11/19 by the Industrial Court. The collective agreement was for the period 1 January 2019 to 31 December 2021 and thereafter. On 3 January 2022, the Union lodged a complaint of non-compliance at the Industrial Court pursuant to Section 56(1) of the Act. The matter was recorded as Industrial Court Case No 1/1–099/2022 ('non-compliance complaint'). The non-compliance complaint was with respect to art 11 of the collective agreement on the contractual annual increments of the Union's members.

On 9 January 2022, the Company offered to pay the Union members their contractual annual bonus provided that they forego their contractual claim for annual increments which is the subject matter of the non-compliance complaint.

In a letter dated 17 January 2022, the Union rejected the Company's offer and requested the Company to pay the Union's members their contractual annual bonus for the year 2021 by 30 January 2022, failing which it will have no alternative but to hold picketing actions on 3 February 2022. In a letter dated 23 January 2022, the Company alleged that the proposed picketing will be unlawful. In a letter dated 25 January 2022, the Union informed the Company that the proposed picketing is lawful and will proceed to picket as scheduled if the Company failed to pay the defendant's members their contractual annual bonus.

a. Advise on the procedure of collective agreement if the Union wants to proceed with another collective agreement with the Company.

(10 marks)

b. Advise the Company whether the action of picketing is possible against them and further action that can be taken by the Company if any.

(15 marks)
(Total: 25 marks)

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SECTION B Answer either Question 4(a) or 4(b)

QUESTION 4(a)

"MALAYSIA's ratification of the International Labour Organization's (ILO) Protocol of 2014 to the Forced Labour Convention 1930 (No 29) is a good start in the road to combating forced labour in the country, say labour industry experts. Malaysia became the 58th country in the world and the second ASEAN member state after Vietnam to ratify the protocol when Human Resources Minister Datuk Seri M Saravanan deposited the instrument of ratification last week at the ILO headquarters in Geneva, Switzerland, in the presence of ILO director-general Guy Ryder."

(Supriya Surendran/The Edge Malaysia April 04, 2022)

(i) Discuss the mission and impact of ILO and its contribution to Malaysian Labour Law. (15 marks)

(ii) Explain the convention of ILO that Malaysia has ratified and discuss the existing Malaysia labour law related to the ratified convention. (10 marks)

(Total: 25 marks)

Or

QUESTION 4(b)

In the case of ***Wong Chee Hong [1988] 1 MLJ 92,*** where the Supreme Court held as follows:

'past cases of constructive dismissals dealt with by this court.....are agreed that whether or not there has been a constructive dismissal is to be determined by the contract test: that is, did the employer's conduct amount to a breach of the contract which entitled the employee to resign? And did the employee make up his mind and act at the appropriate point in time soon after the conduct of which he complained had taken place.'

Explain the development of constructive dismissal cases in Malaysia and the test applicable to prove constructive dismissal.

(Total: 25 marks)

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